SUPREME COURT, U. S.

FILED

NOV 28 1957

JOHN F. DAVIS, CLERK

No. 216

IN THE

Supreme Court of the United States

WALLACE FRANKLIN SATTERFIELD,
Petitioner,

v.

COMMONWEALTH OF VIRGINIA,
Respondent.

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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To the Honorable the Chief Justice and the Justices of the Supreme Court of the United States:

I.

The Commonwealth's Statement Of Facts Is Misleading In Two Instances And Otherwise Fails To Add Materially To The Facts Set Forth In The Petition For Certiorari.

The Statement of Facts in the Commonwealth's brief is misleading in the following two instances:

(1) Testimony of Petitioner And His Family Regarding The Use Of The Petitioner's Hopes For Freedom On Bond As A Lever To Elicit The Confession.

On this issue, the Commonwealth knocked down a straw man. The Commonwealth asserted in argument that "The petitioner's contention that the sheriff created a situation

in which the petitioner's freedom on bond depended upon a confession is contrary to . . . the testimony of . . . the petitioner's father and brother-in-law." Specifically, the Commonwealth asserted that the petitioner claimed in testimony that "the sheriff had denied bond until he confessed. . ." and that the petitioner's father and brother-in-law "would not support this charge." These statements are misleading. Instead of controverting the petitioner's testimony, his family's testimony corroborated it.

The Commonwealth cited no portion of the record in which the petitioner testified that he was "denied bond until he confessed." There was no such testimony. The import of the petitioner's testimony was that the sheriff implied that he had influence over whether the petitioner would go free on bond and that this influence would be used in favor of the petitioner in the event of a full statement. (T. 158, 167, 178)[1] The petitioner testified that the sheriff told him that if he made a statement, "I will let you go home. I will call your daddy and he can come get you tonight." (T. 178)

In support of its assertion that the petitioner's family "would not support" the petitioner's "charge," the Commonwealth cited testimony by the petitioner's family on cross-examination that at no time did the sheriff tell them that they had no right to bond the petitioner out. (T. 146-147, 185) It had never been claimed by anyone that the sheriff had made that sort of statement.

The testimony of the family was that before the confession was obtained, (T. 142-148) the petitioner's father, having brought a bondsman with him to the jail (T. 145), was dissuaded from his intention to have his son bonded

[1] References to that part of the Record contained in the Transcript of the trial on the 29th and 30th of July 1966 are indicated by the letter "T," followed by the appropriate page of the Transcript.

out only by the sheriff's statement that he would rather have the petitioner left in jail overnight so that a lie detector test could be made the next day. (T. 142-148) The petitioner's father further testified that sometime that night the sheriff telephoned him to say that the petitioner had confessed and his father could come get him. (T. 144, 146-147) All of the above testimony was given repeatedly and consistently throughout the trial, was maintained during the portions of the record cited by the Commonwealth. (T. 146-147, 185)[2] and was in its essential details admitted by the sheriff. (T. 104-105, 103-104, 238)

(2) EVIDENCE OF CURSING.

The Commonwealth's brief asserted that the petitioner's testimony that the sheriff cursed him was controverted by other evidence. A check of the portions of the record cited by the Commonwealth in support of this assertion will show that nowhere in them is there anything to controvert the testimony by the petitioner (T. 154, 158, 167) that he was cursed. There never was any such controverting evidence.

[2] The testimony of the petitioner's brother-in-law (T. 185) on the discussion about bond between the sheriff and petitioner's father on the afternoon before the petitioner confessed was hearsay as the petitioner's brother-in-law did not go to the jail until the day after the petitioner had confessed. (T. 382) Pressed by the Commonwealth Attorney on whether the petitioner had been "denied bond" the petitioner's brother-in-law alluded to the statement made by the sheriff to the petitioner's father that he preferred to have the petitioner taken for a lie detector test. (T. 186) Because this testimony did not pinpoint the time involved it could be interpreted to mean that the sheriff's statement came the morning after the petitioner had confessed, however both the petitioner's father (T. 142-148, 439-441) and the sheriff (T. 103-105) testified that the discussion between the sheriff and the petitioner's father in which the petitioner's father asked about bond and the sheriff told him he planned to take the petitioner for a lie detector test occurred *before* the confession was obtained.

The Commonwealth's brief included several citations to testimony not cited in the petition for certiorari, all of which citations are discussed *infra* as follows, organized along the lines of the issues set forth in the petition:[3]

(1) Use Of The Petitioner's Hopes For Bond As A Lever To Elicit The Confession.

The Commonwealth's brief pointed out that in the taping of the confession, the petitioner, in response to leading questions, affirmed that he had been promised no favors and that his confession was of his own free will. (T. 95-96). It is submitted that these answers, made after the petitioner's initial oral confession, considered in light of all of the evidence on this issue, do not overcome the persuasiveness of the evidence that the sheriff used the petitioner's desire for freedom on bond as a lever to elicit the confession.

(2) Overriding Of The Petitioner's Attempts To Invoke His Right To Silence.

The Commonwealth cited testimony by Mr. Monroe Anderson, deputy sheriff that during the time the petitioner's oral confession was being repeated on tape, when the petitioner was asked what his motive was, "he dropped his head, and he worried for a right good while, and then the sheriff cut it off, and then he raised up and said, 'Yeah, that's what I put the poison in the drink for.' " (T. 135)

[3] The issues regarding the failure of the sheriff to make the petitioner understand his Fifth and Sixth Amendment rights prior to his initial oral confession and his failure to advise the petitioner of his right to court-appointed cousel are omitted because as to these issues the Commonwealth neither cited nor referred to any of the relevant facts.

The Commonwealth's brief implied that this testimony showed that interrogation did not continue while the tape was cut off. Insofar as Mr. Anderson's testimony can be given that interpretation, it is in conflict with the testimony of the sheriff, who testified that "He didn't answer the question, and I cut it off and refreshed his memory, and then I repeated the question and he answered it." (T. 118)

(3) *The Totality Of The Circumstances Surrounding the Confession.*

(A) Visit Of The Family.

The Commonwealth pointed out that counsel for the petitioner in cross-examination of the sheriff indicated in the form of a question that members of the petitioner's family were allowed to visit him once during the afternoon before the confession was obtained. (T. 125) The Commonwealth contended that this shows a lessening of the pressures normally attendant to in-custody interrogation in the absence of counsel. However, the testimony of the sheriff made it plain that when the petitioner's family saw the petitioner, their role was not a supportive one, but that confrontation with his family upset the petitioner visibly. The sheriff testified as follows:

> I tell you what the trouble with Frank was. He was just as normal as anybody until some of his people come down. And when he had to confront his people, he would get nervous. Now, that's why they thought he was sick. Frank wasn't sick. (T. 235)

(B) The Lack Of Any Bedding.

The Commonwealth's brief states that "Deputy Sheriff Pruitt . . . said the petitioner . . . was in a single cell

with the same bed, bedding, sheets and pillows that every other prisoner had," citing the following testimony by Mr. Pruitt:

> Q. He had a bed and bedding and sheets and pillows and everything that every other prisoner had?
>
> A. He had everything just like the rest. (T. 139)

This testimony did not pinpoint the time involved. Mr. Pruitt testified shortly after this on cross-examination that he did not know whether the petitioner had been given bedding before he confessed, but that "on the day he's locked up you don't usually fix the beds at night when they lock the cells on the day you were locked up." (T. 140) This testimony tended to corroborate the testimony of the petitioner that he was not given bedding before he confessed and that he spent the first night without any bedding. (T. 179-180)

(C) The Petitioner's Mentality.

The Commonwealth's brief pointed out that the petitioner held a driver's license and that he had held his job in a textile mill for three years. (T. 171-172) It is submitted that these facts do not rebut the evidence of his mental defectiveness. The Commonwealth referred to an attempt by the petitioner to forge a check on Harry Mapp (T. 113, 151, 171-172) stating that Mr. Mapp is a "local attorney," a fact not found anywhere in the record. The fact of the attempted forgery was brought out in cross-examination of the sheriff by counsel for the petitioner; in that cross-examination the sheriff did not deny that in the attempted forgery the petitioner made no attempt to disguise

his own handwriting and that his attempt to pass the check was easily caught.[4]

(D) Petitioner's Sickness, Cold And Lack Of Food.

The Commonwealth's brief cited testimony by the two deputies that the petitioner appeared normal to them, and that he did not complain to them of sickness. (T. 129-132, 137-139) Also cited was testimony of one of the deputies, Mr. Anderson, that the cells seemed warm to him and that as far as he knew the petitioner had been fed the same as other prisoners. (T. 131-132)

However, the sheriff admitted that the petitioner was sufficiently "nervous" to make his family believe he was sick. (T. 235) It was not controverted that when the petitioner was brought into the sheriff's office the sheriff turned up the heat, (T. 158) that the petitioner was thinly clad and that the January weather was very cold. (T. 155-157) Nor was it controverted that the petitioner had not been able to hold down food for two days and that when supper was brought to him shortly before the confession, he could not eat it. (T. 153, 166)

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[4] The testimony on this point was as follows:

QUESTION: (By counsel for petitioner) Isn't it a fact that he forged a check in the name—Harry Mapp's name was signed to it and it was signed in Frank Satterfield's handwriting?

SHERIFF: I don't remember the details of it. It's been several years ago.

QUESTION: Well, did you have any difficulty in the case. It wasn't much trouble at all catching him on that case was it?

SHERIFF: I don't recall how much trouble we went to. (T. 113-114)

II.

The Confession Was Not Volunteered Within The Meaning Of Miranda Because The Petitioner's Act In Calling For The Sheriff Came After He Had Been Implicated By Statements Obtained From Him In Custody And After He Had Been Subjected To Strong Pressures.

The Commonwealth's brief tacitly admits that if the requirements of warnings and waiver set forth in *Miranda* v. *Arizona,* 384 U. S. 436 (June 13, 1966)[5] are applicable in this case, then the confession should have been ruled inadmissible.[6] However, the Commonwealth contends that the act of the petitioner in asking to see the sheriff shortly before his initial confession made the confession a "volunteered" statement within the meaning of *Miranda,* and that therefore the requirements set forth in *Miranda* are inapplicable in this case.

It is submitted that this argument is not well founded because it fails to take account of the coercive circumstances surrounding the petitioner's confinement in jail without counsel for more than seven hours and forty minutes before he sent word for the sheriff. (T. 125, 187-188, 270) During that time, statements obtained from the petitioner in the private interrogations by the sheriff had caught him in a web of incrimination. The sheriff had obtained from the petitioner a statement that the poison had not been put in beans in the Satterfield home "but put in something else" (T. 225) and had apparently obtained an admis-

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[5] Hereinafter referred to as *Miranda.*

[6] The Commonwealth made no attempt to deny that prior to the initial oral confession the petitioner's attempts at silence were overridden and represented to him as *de facto* indications of guilt; that the petitioner could not have understood his right to counsel before his initial oral confession and that he was never advised of his right to court-appointed counsel.

sion that he had bought a bottle of liquid rat poison before the death of the deceased child.[7] In addition to these admissions by the petitioner, the sheriff had obtained from the petitioner's wife a signed statement tending to incriminate the petitioner. (T. 242) Armed with these indicia of guilt, the sheriff, by implying that refusal to take a lie detector test would be a *de facto* admission of guilt, had secured from the prisoner an agreement to take such a test. (T. 243) In addition, the petitioner had been subjected to all of those pressures outlined in the petition for certiorari, including the manipulation of his desire for freedom on bond, (T. 158, 167, 178) the overriding of his attempts at silence, (T. 93, 110, 225-226, 254) the alternate cursing (T. 154, 158, 167) and assurances of friendship (T. 100-103, 238-241, 409-410) and the isolation in solitary confinement (T. 150) without bedding. (T. 97, 139-140, 179) All of the above occurred while the petitioner was in custody (T. 125) without the benefit of counsel (T. 187-188, 270) and without having any understanding of his right to counsel. (T. 111-112, 159, 161, 164-165) It is submitted that the petitioner's act of calling for the sheriff, in the context of the above pressures, and in light of the petitioner's mental defectiveness (T. 150, 159-160, 161-162, 386) and weakness of will (T. 153, 155-157, 166, 177, 184, 188) did not render the confession a "volunteered" statement within the meaning of *Miranda*.

It is also submitted that the signing of the confession the following day does not show voluntariness. The petitioner had spent the night in jail. (T. 168-169)

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[7] The sheriff testified that he might have gotten this information before the end of the second interrogation, but that he thought he was not told about this until he obtained the oral confession. (T. 244-246) However, in the taped statement (taken immediately after the oral confession was obtained that night) the sheriff stated "You told me today you kept it, (the bottle of poison) in the car." (T. 232)

III.

The Opportunity Of The Trial Court To Observe The Demeanor Of The Witnesses Does Not Estop This Court From Reviewing Controverted Facts.

The Commonwealth's brief indicates that wherever there is conflict in the evidence, this Court must accept that version of the evidence most advantageous to the Commonwealth because of the trial court's opportunity to observe the demeanor of the witnesses. It is submitted that this argument is not well founded because the trial court's only resolution of conflicting evidence in favor of the Commonwealth was the mixed finding of law and fact that the confession was "voluntary." (T. 222-223, R. 30-32)[8]

CONCLUSION

The Commonwealth's brief carefully delineates shadings of difference in the facts of the cases decided by *Miranda* and the present case, thereby tending to imply that Virginia courts are free to restrict *Miranda* to its facts. This possible implication is reinforced by the Commonwealth's summation:

> Clearly, the trial judge correctly determined that the factual situation in the *Miranda* case was so different from that which obtained in the case at bar that the decision in the former was not decisive of the issue here.

It is submitted that the facts in this case show more coersion than the facts of the cases decided by *Miranda*. Beyond that consideration, this case raises the question

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[8] References to the Record are indicated by the letter "R." followed by the appropriate page number, except that references to the Transcript of the trial on the 29th and 30th of July, 1966 are indicated by the letter "T." followed by the appropriate page number of the Transcript.

whether the Virginia courts will give full effect to that language in *Miranda* requiring intelligent and voluntary waiver of Fifth and Sixth Amendment rights prior to in-custody interrogation in the absence of counsel. If the meaning of *Miranda* is to be restricted in Virginia to its facts, the most natural place to begin is in the area of waiver. It is the thrust of this petition that the rulings of the lower courts in this case signal just such a danger to the future protection in Virginia of Fifth and Sixth Amendment rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Henry W. McLaughlin, Jr. of Courthouse Square, Halifax, Virginia, a member of the Bar of the Supreme Court of the United States and of counsel for petitioner herein, hereby certify that a copy of this Reply to Respondent's Brief in Opposition to the Petition for Writ of Certiorari has been served upon counsel of record for the respondent herein by depositing the same in the United States Post Office, with first-class postage prepaid, this 27th day of November, 1967, pursuant to the provisions of Rule 33 (1) of the Rules of the Supreme Court of the United States as follows: Robert Y. Button, Esquire, Attorney

General of the Commonwealth of Virginia, Supreme Court-State Library Building, Richmond, Virginia 23219 and J. Willard Greer, Esquire, Commonwealth Attorney for Halifax County, Halifax, Virginia counsel for respondent.

HENRY W. MCLAUGHLIN, JR.